

## Overview of the State aid rules applicable to the land transport sector during the COVID-19 outbreak

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### 1. Introduction

The COVID-19 outbreak is having a major impact on European transport and mobility. It has produced on the one hand massive negative demand shocks in passenger transport by rail, bus and tram, due to the necessary containment measures along with the voluntary efforts to practice social distancing, minimise commuting and avoid travel. These lead to supply chain disruptions, steep reductions in foreign and domestic tourism and overall reduced mobility including on the regional and local levels. On the other hand, whilst rail freight transport has suffered to a certain extent from a decrease in continental and intercontinental supplies, it is ensuring reliable transport of goods across Europe.

Containment measures introduced by Member States have led to a drop in passenger transport services of between 50% and 90%. At the same time, Member States are faced with the need to ensure basic connectivity during the COVID-19 outbreak to keep essential lines open and to plan for ensuring connectivity in the recovery phase. In particular, Member States may need to urgently put in place public services to respond to specific needs or to replace commercial offers that become unavailable due to the COVID-19 outbreak. In the field of transport, these public services could include services aimed at ensuring basic connectivity needs both locally and regionally as well as ensuring security of supply for essential products (e.g. food, drugs, medical equipment).

EU State aid rules enable Member States to support companies affected by the COVID-19 outbreak, including those in the transport sector. The aim is to support the economy and safeguard and restore connectivity as a pillar of the free movement of people and goods while keeping in mind that a competitive internal market is the EU's best asset to bounce back strongly afterwards.

Any public intervention in the transport sector should be designed in a manner that avoids undue distortion of competition during and after the crisis, to preserve the efficient and operational transport ecosystems and thus enable the transport sector to exit the crisis as

quickly as possible. To this end, all undertakings active in land transport, including transport operators, related service providers and infrastructure managers, should have access to the necessary support to protect and restore connectivity for European citizens and businesses and to preserve the integrity and well-functioning of supply chains.

The rail sector is undergoing a long and slow process of market opening, the positive effects of which are just beginning to unfold. The COVID-19 outbreak should not reverse this process or even bring it to a halt. Independent undertakings operating on open access routes are essential in bringing competition and innovative services to the rail sector. In order to decarbonise transport it is important to ensure that State aid does not inadvertently lead backwards in terms of liberalisation or towards more polluting modes of transport. As evidence shows, competition in rail leads not only to a higher take-up of rail due to lower prices and better quality rail services but also reduces considerably the costs of the State to provide these services which, in these times of crisis and enormous pressure on public budgets, appears to be more important than ever.

This note provides guidance on the various support measures Member States may use in line with EU State aid rules to support undertakings active in land transport during the COVID-19 outbreak. The measures taken to address the COVID-19 outbreak may potentially have far-reaching consequences on the future landscape in the road transport sector.

*Section 2* covers all transport services by rail, bus, tram and other track-based transport systems and describes measures that do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (the “TFEU”) and therefore do not need to be notified to the Commission. *Section 3* is dedicated to the emergency award of public service contracts. *Section 3.1* covers measures relating to public passenger transport services by rail, bus, tram and other track-based transport systems that constitute State aid but are exempted from notification to the Commission as they fulfil the requirements of Regulation (EC) N°1370/2007 on public passenger transport services by rail and road.<sup>1</sup> *Section 3.2* covers public service contracts for public passenger transport services by bus or tram that are covered by the Directives 2014/25/EU<sup>2</sup> and 2014/24/EU<sup>3</sup> (“the Public Procurement Directives”) and Directive 2014/23/EU<sup>4</sup> and which do not constitute State aid. *Section 3.2* also covers the award of emergency public service contracts for rail freight transport under the Public Procurement Directives. *Section 4* describes measures that Member States may design specifically to tackle the COVID-19 outbreak across sectors and which

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<sup>1</sup> Regulation (EC) 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) 1191/69 and 1107/70, OJ L 315 of 3 December 2007, p.1, as amended.

<sup>2</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94 of 28 March 2014, p. 243, as amended.

<sup>3</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94 of 28 March 2014, p. 65, as amended.

<sup>4</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94 of 28 March 2014, p. 1.

constitute State aid and need to be notified to the Commission. *Section 5* explains which State aid measures can be considered compatible for the rail sector under the Railway Guidelines.<sup>5</sup>

## 2. Measures that do not constitute aid

### 2.1 General measures

Member States may wish to adopt measures applying to all economic actors in order to stabilise the economy, prevent impending unemployment waves and provide immediate relief across all sectors. General measures applicable to all economic sectors, such as wage subsidies, suspension of corporate tax and VAT or social contributions payments, do not constitute State aid and do not need to be notified to the Commission.<sup>6</sup>

### 2.2 Public remit measures

To the extent COVID-19 related emergency activities fall within the public remit, i.e. concern activities that the State normally performs in the exercise of its public powers, the public funding of such activities does not fall under the State aid rules. Such activities may include transporting people or goods for medical reasons.

If the beneficiary does not perform any economic activity at all, State aid rules do not impose any kind of control of the level of funding that it receives for public remit operations (e.g. in case the army or the police performs such operations without any involvement of undertakings). However, if the beneficiary not only performs public remit operations but also economic activities, the public funding must not exceed what is necessary to compensate the extra costs related to the public remit activities.

### 2.3 De minimis aid

Public funding granted to an undertaking not exceeding EUR 200 000 over three fiscal years is not regarded as State aid, provided the other conditions of the de Minimis Regulation<sup>7</sup> are also fulfilled.

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<sup>5</sup> Communication from the Commission - Community guidelines on State aid for railway undertakings, OJ C 184 of 22 July 2008, p.13.

<sup>6</sup> See points 40 and 42 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 911, 20.3.2020, p. 1-9), as amended from time to time (the “Temporary Framework”). For latest courtesy consolidated version, see [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html).

<sup>7</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.

### **3. Public service obligations and public service contracts that do not necessitate notification**

Member States may wish to safeguard land transport services that, whilst falling outside of the public remit, are of particular importance to citizens (e.g. providing connectivity across territories). Such services qualify as services of general economic interest (“SGEI”). Public service compensation granted for the execution of SGEI can either be qualified as (i) no aid, (ii) State aid exempted from notification to the Commission or (iii) State aid to be notified to the Commission.

Due to the COVID-19 outbreak, certain commercial services are no longer available. On the other hand, demand for services provided under existing public service contracts has considerably decreased in many cases whilst special needs might not be catered for under existing contracts. Therefore, it might become necessary to amend existing public service contracts or to introduce new ones to meet the altered needs during the COVID-19 outbreak.

This section explains the different rules which are applicable in the event of a disruption of services, or the immediate risk of such a situation, to the introduction or amendment of i) public services covered by Article 5 of Regulation (EC) N°1370/2007, and ii) public service contracts whose award is covered by the Public Procurement Directives or Directive 2014/23/EU on the award of concession contracts.

#### **3.1 Public services covered by Article 5 of Regulation (EC) N° 1370/2007**

Public service contracts for rail and metro passenger transport services as well as public service contracts in the form of concessions for transport services by bus or tram shall be awarded in accordance with Article 5(2) to 5(6) of Regulation (EC) N°1370/2007<sup>8</sup>.

For those types of contracts, Regulation (EC) N°1370/2007 explicitly provides for an emergency procedure: according to Article 5(5) the competent authority may take emergency measures in the event of a disruption of services or the immediate risk of such a situation. Those emergency measures shall take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations.

The Commission services recognise that the severe reduction of passenger traffic due to the COVID-19 outbreak and the subsequent loss of income may lead to such disruptions of services. Therefore, Member States may take emergency measures under Article 5(5) of Regulation (EC) N°1370/2007.

Two different scenarios can be distinguished.

*New public service routes*

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<sup>8</sup> See Article 5(1).

Competent authorities may introduce a new public service that did not exist before the COVID-19 outbreak on a given line. They may also substitute a commercial service that is not available anymore for a public one.

In those cases, the competent authority may directly award a public service contract in derogation to the rule according to which, in principle, public service contracts are awarded on the basis of a competitive tendering procedure.

The public service contract must respect the provisions of Regulation (EC) N° 1370/2007, and in particular the principles set out in its Article 4, especially as regards the definition of the public service obligation, the ex-ante establishment of the parameters on which basis the compensation is calculated, and the prohibition of overcompensation.

*Pre-existing public service routes:*

Article 5(5) of Regulation (EC) N°1370/2007 also covers modifications or suspensions, in accordance with national law, of existing public service contracts in emergency situations, as this is the case due to the Covid-19 outbreak, if these are justified by the disruption of services or the immediate risk thereof.

The Commission services are aware that public transport operators' revenues from ticket sales have significantly decreased due to the drop in demand induced by the COVID-19 outbreak. This may endanger the operators' financial viability, in particular in case of public service contracts of a concession type or of a net cost contract type where mainly the operators assume the revenue risks.

Despite reduced service volumes, public transport operators need to continue paying salaries of employees as well as for maintenance and amortization of rolling stock that is used to provide passenger transport services. Compensation for this expenditure may be necessary to safeguard the operator's financial viability and its prospects of resuming the service once the emergency period is over (unless these costs are already taken care of under horizontal aid schemes).

Therefore, the present circumstances could call for a temporary suspension or temporary revision of public service contracts, including for example the adaptation of transport volumes and frequencies of public services to lower demand or the introduction of new requirements that become necessary as a response to the COVID-19 outbreak. When modifying existing contracts, the overarching principle that service providers may not be overcompensated continues to apply. If authorities bear an increased amount of risk, such as the revenue risk during the COVID-19 outbreak which before was borne by the operator, the reasonable profit granted through the compensation must be revised downwards to reflect the lower risk the operator is facing, or, in other words, the compensation must always be commensurate to the risks. Public service contracts awarded under Article 5(5) should generally include a lower reasonable profit level than under the initial contract as Member States financially assume the cost of disruptions.

In accordance with Article 5(5) of Regulation (EC) N°1370/2007, the period for which a public service contract is awarded, extended or imposed by emergency measures may not exceed the maximum period of two years. This period should, however, not be exhausted if this is not necessary under the circumstances. Likewise, when modifying an existing contract, the modification can be agreed or imposed for the estimated duration of the crisis situation, as long as the duration does not exceed two years. If the initial contract has not yet ended upon the expiry of that duration, the initial terms of the contract can apply again for the remainder of the initial duration of the contract.

Lastly, in cases where the operator bears a certain revenue risk and the existing contract is not yet suspended or modified, but the competent authority orders the public service operator to reduce traffic volumes due to lower demand for public transport services because of the COVID-19 outbreak, the authority concerned may temporarily delay the adaptation of the compensation amount. However, in the meantime, the contractual conditions should be amended, and at the latest at the end of the reference period (e.g. end of the contract year or later, if the crisis period continues) a recalculation of the compensation amount based on the real costs incurred must be performed to avoid overcompensation, taking into consideration the applicable requirements of Regulation (EC) N°1370/2007, in particular those laid down in Articles 4 and 6.

It is to be noted that Article 5(5) of Regulation (EC) N°1370/2007 can only be relied upon to the extent that the direct award is justified by the disruption of services or the immediate risk thereof. Member States should always ensure that even in crisis time, they respect the principles of necessity and proportionality. Furthermore, when competing companies are operating on the market, Member States should always select the intervention tool that least distorts competition (e.g. contracts must be restricted to the shortest period possible).

Contracts which are awarded or modified in accordance with Article 5(5) of Regulation (EC) N°1370/2007 and comply with all of its conditions are exempted from notification.

### **3.2 Public service contracts whose award is covered by the Public Procurement Directives and Directive 2014/23/EU on the award of concession contracts**

Public service contracts as defined in the Public Procurement Directives<sup>9</sup> for public passenger transport services by bus or tram are awarded in accordance with these directives. Public service contracts for rail freight services are awarded in accordance with the Public Procurement Directives or Directive 2014/23/EU on the award of concession contracts<sup>10</sup>.

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<sup>9</sup> See Article 2(9) of Directive 2014/24/EU.

<sup>10</sup> “Services concession contract” is defined in Article 5(1)(b) of Directive 2014/23/EU. Service concession contracts differ from public service contracts in that they involve the transfer to the concessionaire of an operating risk. The concessionaire is deemed to assume operating risk “*where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred [...]*”.

### *3.2.1 Award of new contracts*

#### *Public service contracts for passenger transport by bus and tram*

In accordance with Article 5(1) of Regulation (EC) N°1370/2007, where public service contracts for public passenger transport services by bus or tram take the form of service contracts or public service contracts as defined in the Public Procurement Directives, they shall be awarded in accordance with the procedures provided for under those Directives. Therefore, the emergency procedure set out in Article 5(5) of Regulation (EC) N° 1370/2007 does not apply. However, the other provisions of Regulation (EC) N°1370/2007, such as Article 4 on the mandatory content of the public service contract and Article 6 on the public service compensation, continue to apply to such contracts.

The Public Procurement Directives provide for different urgent award procedures, including the possibility of a negotiated procedure without publication. In this respect, reference is made more specifically to Section 2 of the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis.<sup>11</sup> It sheds light on the criteria for choosing and applying the appropriate procedures, including the criteria for determining whether “extreme urgency” justifies recourse to the negotiated procedure without publication.

Provided all requirements under Regulation (EC) N°1370/2007 and under the Public Procurement Directives are complied with, no notification under State aid law is necessary for the urgent award of public service contracts for public passenger transport services by bus or tram.

#### *Rail freight public service contracts*

Rail freight transport services are not covered by Regulation (EC) N°1370/2007 and therefore Article 5(5) is not applicable. The award of a public service contract for rail freight transport needs to comply with the Public Procurement Directives or, in the case of a services concession contract, with Directive 2014/23/EU on the award of concession contracts.

While the Public Procurement Directives explicitly assume that in circumstances of extreme urgency a prior publication may be dispensed with under certain conditions, the same exception is not provided for in Directive 2014/23/EU. The Commission services therefore recommend that for rail freight, in case of urgency, Member States conclude public service contracts within the meaning of the Public Procurement Directives.

In addition, the general rules on services of general economic interest (“SGEI”) apply. They govern the conditions under which a compensation for an SGEI can be granted. Provided all requirements are respected, including the definition of a public service obligation, the *ex ante* establishment of the cost parameters and the absence of overcompensation, no notification under State aid rules is necessary.

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<sup>11</sup> OJ C 108I, 1.4.2020.

The starting point is the *Altmark* judgement<sup>12</sup> of the Courts of Justice. This judgment sets out four cumulative conditions which, if met, mean that the compensation does not constitute an advantage to the service provider, and, therefore, the measure does not constitute State aid.

Given the exceptional circumstances arising out of the COVID-19 outbreak, which impacts all of the European Union, and given that the COVID-19 outbreak has been recognized by the Commission as an exceptional occurrence, the following provides guidance on how the four *Altmark* criteria could be fulfilled. It is up to the Member States to self-assess whether the planned measure would comply with the *Altmark* conditions, and, thus, not constitute aid. In such cases, no formal notification to the Commission under State aid rules would be required.

*First Altmark criterion: definition of the scope of the public service*

1. Member States need to clearly define:
  - i. The essential route(s) to be maintained active;
  - ii. The respective minimum required frequency (in terms of connections) and volumes (e.g. passenger capacity, freight volume).
2. The necessity of the measure could be demonstrated by showing that:
  - i. During the months of the containment measures of the COVID-19 outbreak there has been a severe and unforeseeable *decrease in passenger and/or freight demand*; and
  - ii. *Subsequent losses of passenger and/or freight revenue* make the provision of the service *no longer economically viable*.

The description of the scope does not have to be detailed in terms of all qualitative elements, but it does need to be sufficiently clear, so that the undertaking has a clear SGEI obligation to discharge. The contract should have a limited duration, which shall not exceed three to six months and, in any case, should not extend beyond 31 December 2020. The contract may be renewed beyond 31 December 2020 for another three months, but only provided that such extension is duly justified by the evolution of the COVID-19 outbreak and having regard to the principles of proportionality and necessity.

*Second and third Altmark criteria: ex-ante financial parameters and control of overcompensation*

In the context of the COVID-19 outbreak, the following observations may assist Member States by way of an example in setting out the compensation mechanism and avoiding overcompensation.

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<sup>12</sup> Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* ('*Altmark*' judgment), C-280/00, EU:C:2003:415, par. 88 to 93.

If the services in question have so far been operated on a commercially viable basis, in general, it might be considered sufficient to base the compensation parameters for each route on the observed profit and loss accounts calculated for either the last two months before the COVID-19 outbreak (in principle January and February 2020) and/or the months of 2019 covering the corresponding period contemplated for the PSO in 2020 (e.g. April to September 2019 if the PSO is to be put in place from April to September 2020).

As the COVID-19 outbreak mainly affects the level of revenues, there is an assumption that the cost structure should be identified as the average (or close to the average) of the amounts reported monthly in the profit and loss accounts and that this cost structure should in principle constitute the ceiling to determine the eligible costs. The compensation should therefore not exceed the difference between the average revenues observed during the selected months and the corresponding costs. The compensation may be adjusted downwards to take into account the variation of frequencies and any variable costs. It may also take into account additional costs, for example those arising from COVID-19 related sanitary measures.

Member States may decide to pay a reasonable profit to the land transport operator discharging the PSO in question. In this case, the following methodology may be used to benchmark the level of profit. As the subsidised companies should not be overcompensated, the level of profit could be benchmarked to the level of profit of land transport companies commercially active on similar routes before the COVID-19 outbreak. The choice of the financial metrics is left to the discretion of Member States' authorities. It should correspond to generally accepted standards in the financial industry (return on equity, return on capital employed or similar). The benchmark should help Member States identify a suitable range of values and determine a maximum level of compensation (abnormally high records should be excluded from that range). Last, the set-up should include a claw-back mechanism which would allow Member States' authorities to check for overcompensation ex-post and have any overcompensation returned.

#### *Fourth Altmark criterion: least cost to the community*

The aim of the fourth Altmark criterion is to ensure that any compensation paid corresponds to the least cost to the community. In order to fulfil the fourth Altmark criterion, Member States must either (i) choose the transport operator pursuant to a public procurement procedure, or (ii) directly award a public service contract to a typical transport company that is well run and adequately provided with the necessary means of transport. Member States are invited to self-assess compliance with these criteria, taking into account the context of the ongoing crisis.

To that end, Member States may rely on the guidance related to the emergency public procurement procedures in the COVID-19 crisis set out in the Public Procurement Communication<sup>13</sup>, as reflected below.

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<sup>13</sup> See footnote 11.

Insofar as the public service contracts take the form of *service* contracts within the meaning of the Public Procurement Directives, their award must comply with these Directives. Articles 26 to 32 of Directive 2014/24/EU and Articles 44 to 50 of Directive 2014/25/EU provide for a variety of procedures depending, *inter alia*, on the characteristics of the case, including its urgency. Article 28 and Article 46 of Directives 2014/24/EU and 2014/25/EU respectively provide that in case of urgency, Member States using the restricted procedure may fix a time limit for the receipt of request to participate of not less than 15 days and a time limit for the receipt of tenders of not less than 10 days. Article 32(2)(c) and Article 50(d) of Directives 2014/24/EU and 2014/25/EU respectively provide that a negotiated procedure without prior publication or call for competition may apply for reasons of extreme urgency. In case of such extreme urgency, national authorities may, therefore, even proceed with a *de facto* direct award in duly justified circumstances.

On substance, the procedures under Articles 26 to 32 of Directive 2014/24/EU and Articles 44 to 50 of Directive 2014/25/EU provide for (i) reduced deadlines to accelerate open or restricted procedures for the conclusion of a public service contract; and/or (ii) a negotiated procedure without publication, including, if duly justified and proportional, the *de facto* direct award of a public service contract. Member States are free to choose among procedures to award the public service contract. If the conditions described above are fulfilled for *new* public service obligations, no formal notification to the Commission would be required.

In case the conditions described above are not fulfilled, Member States shall notify the compensation directly under Article 93 of the TFEU (see section 6 below).

### *3.2.2 Amendment of pre-existing contracts*

As regards *existing* public service contracts awarded under the Public Procurement Directives and Directive 2014/23/EU, they may be modified without a new procurement procedure according to Articles 43(1)(c) of Directive 2014/23/EU, 72(1)(c) of Directive 2014/24/EU and Article 89(1)(c) of Directive 2014/25/EU, if the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee and if the modification does not alter the overall nature of the contract. In the case of contracts awarded under Directive 2024/24/EU and Directive 2014/23/EU, additionally any increase in value should not be higher than 50% of the value of the original contract.<sup>14</sup>

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<sup>14</sup> See Article 43(1)(c) of Directive 2014/23/EU, Article 72(1)(c) of Directive 2014/24/EU, and Article 89(1)(c) of Directive 2014/25/EU.

## **4. State support specifically targeting the COVID-19 outbreak (to be notified)**

### **4.1. The Temporary Framework for State aid measures to support the economy in the COVID-19 outbreak**

On 19 March 2020, the Commission adopted a Temporary Framework for State Aid measures to support the economy in the current crisis. The Temporary Framework sets out *inter alia* the compatibility conditions the Commission will apply for the assessment of measures under Article 107(3)(b) TFEU which allows for State aid to remedy a serious disturbance in the economy of a Member State. This Temporary Framework was amended on 3 April 2020 and on 8 May 2020 to cover additional aid measures. The Temporary Framework applies to almost all sectors and undertakings, including transport undertakings, and mentions transport as one of the most affected sectors. It aims to remedy the liquidity shortages faced by companies. To address urgent liquidity needs in particular of small and medium-sized enterprises in a speedy manner, Member States may give support of up to the nominal value of EUR 800 000 per undertaking in the form of direct grants, loans, tax and payment advantages, or other forms such as guarantees on loans covering 100% of the risk. This State support can be combined with so-called de minimis aid and with other types of aid, provided the cumulation rules are respected.

In addition, the Temporary Framework provides for possibilities of aid covering liquidity needs beyond EUR 800 000 per undertaking in the form of guarantees and interest rate subsidies, subject to, *inter alia*, minimum pricing conditions under sections 3.2 and 3.3 of the Temporary Framework. Section 3.9 of the Temporary Framework provides for schemes deferring tax and/or social security contributions, which may also cover undertakings in the land transport sector. The same applies for section 3.10 of the Temporary Framework, which provides for aid in the form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak. Section 3.11 of the Temporary Framework enables Member States to provide public support in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak, including undertakings in the land transport sector.

State support granted in accordance with the Temporary Framework must be notified to the European Commission.

More information on the possibilities for State support under the Temporary Framework are contained under the following link:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

### **4.2. Aid granted under Article 107(2)(b) TFEU**

According to Article 107(2)(b) TFEU, aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market.

In its Decision of 12 March 2020 concerning a Danish State aid scheme<sup>15</sup>, the Commission concluded that the COVID-19 outbreak qualifies as an “exceptional occurrence” for the purpose of Article 107(2)(b). Pursuant to the case-law, only damage having a direct causal link with the exceptional occurrence, here the COVID-19 outbreak, can be compensated by State aid under Article 107(2)(b) TFEU.<sup>16</sup> On that basis, Member States can compensate companies for damages caused by the COVID-19 crisis including for lost revenues, subject to the notification of the planned support measure to the Commission including appropriate evidence of the damage suffered as well as of the direct causal link between the exceptional occurrence and the damage. The information that should be provided for notifications of aid under Article 107(2)(b) is listed in the following document:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/Notification\\_template\\_107\\_2\\_b\\_PUBLICATION.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/Notification_template_107_2_b_PUBLICATION.pdf)

The list of decisions approved by the Commission under the Temporary Framework and Article 107(2)(b) is provided at the following link:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

It is updated on a daily basis to inform public authorities about the Commission decision-making practice in a comprehensive manner and in real time.

## **5. General State support for land transport (to be notified)**

### **5.1. The Railway Guidelines**

In addition to the support measures described above, the Railway Guidelines<sup>17</sup> provide a toolbox of measures that could also contribute to providing financial relief to the rail sector. There is, for instance, the possibility to introduce aid schemes for infrastructure use (in particular by refunding track access charges) or to reduce or refund charges for traction energy, providing aid for reducing external costs, which rail transport makes it possible to avoid compared to other competing modes of transport.

The Railway Guidelines are accessible under:

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:184:0013:0031:EN:PDF>.

### **5.2. State support directly under Article 93 TFEU**

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<sup>15</sup> State Aid SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19.

<sup>16</sup> Judgment in Case C-73/03 Spain v Commission EU:C:2004:711, paras 36-37. Judgment in Case C-346/03 Atzeni EU:C:2006:130, para. 79. Judgment in Case C-278/00 Greece v Commission EU:C:2004:239, paras 81-82. Judgment in Case T-268/06 Olympiaki Aeroporia Ypiresies v Commission EU:T:2008:222, para. 49.

<sup>17</sup> Communication from the Commission - Community guidelines on State aid for railway undertakings, OJ C 184 of 22 July 2008, p.13.

Article 93 TFEU provides that *“Aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service”*.

Article 93 of the Treaty is directly applicable as a legal basis for establishing the compatibility of aid not covered by Regulation (EC) N° 1370/2007.

The aid must thus be notified to the European Commission and can only be granted after authorization.